

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DARRELL STEPHENS,

Petitioner

v.

C-1-05-243

WANZA JACKSON,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 10) recommending that the Petition for Writ of Habeas Corpus be dismissed to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order his Report and Recommendation dated September 22, 2005. The Petition for Writ of Habeas Corpus is, therefore, **DENIED**.

Respondent's motion to dismiss (Doc. 3) is **GRANTED**, and petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DISMISSED** with prejudice as time-barred under 28 U.S.C. § 2244(d).

A certificate of appealability is issued with respect to this Order dismissing the petition with prejudice on procedural statute of limitations grounds, because pursuant to the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000), “jurists of reason” would find it debatable (1) whether this Court is correct in its procedural ruling, and (2) whether petitioner has stated viable constitutional claims for relief in the petition to the extent that the issues presented therein are “adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack*, 529 U.S. at 484 (in turn quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983))).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that the appeal of this Order would be taken in “good faith” and, therefore, **GRANTS** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

This case is **DISMISSED AND TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court